

REMARKS

Claims 72-105 are pending in the captioned application. In the outstanding Official Action, the Examiner has required restriction of claims 72-105 to a single invention.

By this Response to Restriction Requirement, an election with traverse is made.

RESTRICTION REQUIREMENT SUMMARY

The Examiner has required restriction of claims 72-105 to a single invention under 35 U.S.C. §121 and 372. Claims 72-105 were subjected to a Restriction Requirement as follows:

- Group I: claims 72-88, drawn to a vector comprising a DNA sequence derived from HHV-6 or HHV-7 and a method of eliciting an immune response in a mammal comprising administering a vector comprising DNA sequence derived from HHV-6 or HHV-7;
- Group II: claims 89-91, drawn to mammalian cells comprising a vector comprising a DNA sequence derived from HHV-6 or HHV-7;
- Group III: claim 105, drawn to a pharmaceutical composition comprising a pharmaceutically acceptable carrier and a DNA vector;
- Group IV: claims 92-93, drawn to a method of producing mammalian cells capable of producing a product of a nucleic acid;
- Group V: claims 97-100, 102 and 103, drawn to a Concatameric vector comprising repeats of a DNA sequence derived from HHV-6 or HHV-7 and a method of using and producing a Concatameric vector;
- Group VI: claims 101 and 104, drawn to a method of producing virions and a method of eliciting an immune response using said virions; and
- Group VII: claims 95-96, drawn to a method of producing a desired protein.

PROVISIONAL ELECTION

Applicant hereby provisionally elects Group I, an implant, drawn to claims 72-88, with traverse.

TRAVERSAL

Applicant respectfully traverses the Examiner's restriction/election requirement.

First, Applicant notes that the Examiner did not include claim 94 in any of the groups of the restriction/election requirement. Claim 94 is drawn to a method of producing a desired protein. It would appear that claim 94 should be included in Group VII, as both claims 95 and 96 of Group VII are dependent on claim 94. Applicant respectfully requests the Examiner to reconsider and withdraw the restriction / election requirement, and to examine all of the claims pending in this application. In the event that the Examiner maintains the present restriction/election requirement, Applicant requests further clarification as to how the Examiner views claim 94.

Second, the restriction/election requirement is traversed because it omits "an appropriate explanation" as to the existence of a "serious burden" if restriction were not required. See MPEP 803. A complete and thorough search for the subject matter set forth in provisionally elected Group I set forth above would require searching the art areas appropriate to all other subject matter contained in this application. Since a search of the subject matter of provisionally elected Group I and all other subject matter contained in this application would be coextensive, it would not be a **serious** burden upon the Examiner to conduct a search of **all** subject matter contained in this application.

Furthermore, Applicants have paid a filing fee for the examination of ***all*** the claims in this application. If the Examiner does not examine the claims paid for when filing this application and requires Applicants to file divisional applications for each of the groups of claims, the Examiner would essentially be forcing Applicants to pay duplicative fees for the non-elected or withdrawn claims, inasmuch as the original filing fees for the claims (which would be later prosecuted in divisional applications) are not refundable.

CONCLUSION

In view of the foregoing, applicants respectfully request the Examiner to reconsider and withdraw the restriction / election requirement, and to examine all of the claims pending in this application.

If the Examiner has any questions or wishes to discuss this matter, the Examiner is welcomed to telephone the undersigned attorney.

In the event this paper is not timely filed, Applicants hereby petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Respectfully submitted,

THE NATH LAW GROUP

A handwritten signature in black ink, appearing to read "Gary M. Nath", written over a horizontal line.

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